

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

JOSE COSTAS,

Defendant.

22-CR-280 (JPO)

ORDER

J. PAUL OETKEN, District Judge:

On January 25, 2024, Defendant Jose Costas filed a motion, pursuant to 18 U.S.C. § 3582(c)(2), for a reduction of his sentence pursuant to Amendment 821 to the United States Sentencing Guidelines, which went into effect on November 1, 2023, and applies retroactively. (ECF No. 47.) The Government filed an opposition to Costas's motion on February 16, 2024. (ECF No. 51.)

“In determining whether, and to what extent, a reduction in the defendant’s term of imprisonment . . . is warranted” pursuant to Amendment 821, the Court must first “determine the amended guideline range that would have been applicable to the defendant if” the Amendment “had been in effect at the time the defendant was sentenced.” U.S.S.G. § 1B1.10(b)(1). A reduction of sentence is not authorized if the relevant amendments do not lower the defendant’s applicable Guidelines range. *See id.* § 1B1.10(a)(2). U.S.S.G. § 1B1.10(b)(2)(A) then provides that, with an exception not relevant here, “the court shall not reduce the defendant’s term of imprisonment . . . to a term that is less than the minimum of the amended guideline range determined under subdivision (1) of this subsection.”

Defendant is ineligible for a reduction in his sentence because his Guidelines range remains the same. Part A of Amendment 821 alters a provision of the Guidelines that applies

additional criminal history points for those who committed the offense while subject to a criminal justice sentence, but Costas did not receive an enhancement under that provision. (ECF No. 50 at 2.) Part B of Amendment 821 creates a new provision that provides a two-level downward adjustment in offense level for those who have zero criminal history points and meet other criteria, but Costas has more than zero criminal history points. (*Id.*) As a result, Costas is not eligible for a sentence reduction under Amendment 821. (See ECF No. 50 at 2.)

For the foregoing reasons, Costas's motion is denied. The Clerk of Court is directed to close the motion at ECF No. 47 and to mail a copy of this Order to:

Jose Costas
Register No. 91437-054
FCI Fort Dix
Federal Correctional Institution
P.O. Box 2000
Joint Base MDL, NJ 08640

SO ORDERED.

Dated: March 12, 2024
New York, New York


J. PAUL OETKEN
United States District Judge